IMT Exhibits

Union Exh 6, 7, 8, 10
Decision + Direction
of
ELECTION

U-6

From: Aislinn McGuire <amcguire@kmm.com>
To: chaikinlaw <chaikinlaw@aol.com>
Subject: RE: IMT collective agreement document
Date: Mon, Jul 17, 2017 4:47 pm
Attachments: 4821-1207-9691 v.3 - Final CBA Proposal.docx (63K), 4834-6529-2875 v.1 - Final CBA CLEAN.docx (53K)

Eric,

I apologize for the delay – I don't typically involve another attorney after negotiations have progressed because there are always things that get lost in transition, which happened in this case; but I had no choice. Now Peter is on vacation for two weeks so there is yet again a transition, but here is the final. The working dues amount needs to be added.

Aislinn S. McGuire, Esq.
Kauff McGuire & Margolis LLP
212-909-0739

From: chaikinlaw@aol.com [mailto:chaikinlaw@aol.com]
Sent: Monday, July 17, 2017 12:34 PM
To: Aislinn McGuire <amcguire@kmm.com>
Subject: IMT collective agreement document

Aislinn, what is happening with the presentation of the agreement we reached agreement on before July 1. It is now 17 or more days since agreement was reached with the acceptance of Peter Clark's proposal. The failure to expeditiously forward the document to us for execution erodes the term of the agreement unfairly. Please advise as to what IMT's intentions are in regard to this matter.
Thanks, Eric

Chaikin & Chaikin
375 Park Avenue, Suite 2607
New York, New York 10152
(212) 688-0888
(212) 594-5064 (fax)

U-7

From: Eric Chaikin <chaikinlaw@aol.com>
To: Fred Clemenza <fredlocal175@aol.com>
Subject: Fwd: IMT Collective Agreement
Date: Thu, Jul 20, 2017 3:23 pm

See below

Eric Chaikin
Chaikin & Chaikin
375 Park Avenue, Suite 2607
New York, New York 10152
212.688.0888 (phone)
212.594.5064 (fax)

Begin forwarded message:

From: Aislinn McGuire <amcguire@kmm.com>
Date: July 20, 2017 at 2:49:12 PM EDT
To: "chaikinlaw@aol.com" <chaikinlaw@aol.com>
Subject: RE: IMT Collective Agreement

It is effective July 17 – I will send as soon as I receive.

Aislinn S. McGuire, Esq.
Kauff McGuire & Margolis LLP
212-909-0739

From: chaikinlaw@aol.com [mailto:chaikinlaw@aol.com]
Sent: Wednesday, July 19, 2017 1:44 PM
To: Aislinn McGuire <amcguire@kmm.com>
Subject: IMT Collective Agreement

Aislinn: Fred has asked me when we can expect to receive back from Bill Haugland the signed agreement which we dated effective July 17, 2017. Please advise. Thank you. Eric

Chaikin & Chaikin
375 Park Avenue, Suite 2607
New York, New York 10152
(212) 688-0888
(212) 594-5064 (fax)

U-8

From: Aislinn McGuire <amcguire@kmm.com>
To: chaikinlaw <chaikinlaw@aol.com>
Subject: FW: Signed IMT Collective Agreement
Date: Thu, Jul 27, 2017 7:09 am

From: Billy Haugland II [mailto:billyh@hauglandllc.com]
Sent: Wednesday, July 26, 2017 5:16 PM
To: Aislinn McGuire <amcguire@kmm.com>
Subject: Re: Signed IMT Collective Agreement

Please just let them know I have been away and will complete the last technicality as soon as I physically can. There is no reneging taking place.

Sent from my iPhone

On Jul 26, 2017, at 3:35 PM, Aislinn McGuire <amcguire@kmm.com> wrote:

From: chaikinlaw@aol.com [mailto:chaikinlaw@aol.com]
Sent: Wednesday, July 26, 2017 2:25 PM
To: Aislinn McGuire <amcguire@kmm.com>
Subject: Signed IMT Collective Agreement

Aislinn: Fred Clemenza signed the agreement forwarded to him; signed it; dated it July 17, 2017; and returned it to your office requesting Billy's signature. You acknowledged receipt; advised it would be effective as of July 17; and that you would get the company's signature on the document. It would be a simple item to scan or fax it to Billy for his signature; yet over a week has gone by and nothing from Billy. Please take a moment to advise me what is the status of our receiving back a fully executed contract. Is Billy reneging; is it on the way; will you be sending it today? What? Fred's members are asking him for a copy.
Thanks, Eric

Chaikin & Chaikin
375 Park Avenue, Suite 2607
New York, New York 10152
(212) 688-0888
(212) 594-5064 (fax)

From: Aislinn McGuire <amcguire@kmm.com>
To: chaikinlaw <chaikinlaw@aol.com>
Subject: Grace
Date: Tue, Aug 15, 2017 2:28 pm

U 10

Eric,

Wage increases retroactive to July 17 will be paid promptly and I expect to have a signed copy of the agreement today or tomorrow.

Aislinn S. McGuire, Esq.
Kauff McGuire & Margolis LLP
950 Third Avenue, 14th Floor
New York, NY 10022
tel (212) 909-0739
fax (212) 644-1936
amcguire@kmm.com
www.kmm.com

UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

INWOOD MATERIAL TERMINAL, LLC
Employer

and

Case No. 29-RD-206581

CARLOS CASTELLON
Petitioner

and

UNITED PLANT & PRODUCTION WORKERS
LOCAL 175 P [1]
Intervenor

DECISION AND DIRECTION OF ELECTION

Inwood Material Terminal, LLC, herein called the Employer, a New York limited liability company, provides recycling services to other businesses. Its employees have been represented for the purposes of collective bargaining by United Plant & Production Workers, Local 175 P, herein called the Union or Local 175. On September 21, 2017, an Individual, Carlos Castellon, herein called the Petitioner, filed a petition under 9(c) of the National Labor Relations Act, herein called the Act, seeking to decertify the Union as the representative of the bargaining unit.[2]

The Union asserts that an election is not appropriate because it and the Employer entered into a collective bargaining agreement on July 17, 2017 which bars an election in this case. The Employer contends that the collective bargaining agreement is not a bar to an election at this time.

A hearing in this matter was held before a hearing officer of the National Labor Relations Board. The Employer and the Union orally argued their respective positions prior to the close of the hearing.[3] As explained below, based on the record and relevant Board law, I find that the collective bargaining agreement does not bar an election in this case. Accordingly, I will direct that an election be held in an appropriate unit.

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[1] The name of the Intervenor is amended to reflect its full and correct name as set forth in a stipulation of the parties.
[2] The Petitioner is an employee of the Employer.
[3] The Petitioner did not orally argue.

FACTS

Certification of Representative and Bargaining for an Initial Collective Bargaining Agreement

On September 20, 2016, the Union was certified as the collective bargaining representative of all full-time and regular part-time drivers, machine operators, mechanics and laborers employed by the Employer and working at or out of its facility located at 1 Sheridan Boulevard, Inwood, New York, and 47 Herb Hill Road, Glen Cove, New York, but excluding clerical employees, confidential employees, managers, guards and supervisors as defined by the National Labor Relations Act.

Thereafter, the Employer and the Union participated in negotiations for an initial collective bargaining agreement.[4] There were at least ten bargaining sessions. According to Union President Clemenza, the parties worked off of various drafts, including Union Exhibit No. 2, a document dated March 7, 2017 which was prepared by the Employer's attorney. The March 7 working draft indicates on the cover page, "The Employer reserves the right to revise, rescind, amend or otherwise modify these proposals." (Union Exhibit No. 2).

On July 17, 2017, Employer attorney McGuire forwarded, by email, a "final" collective bargaining agreement, noting that the "working dues amount needed to be added." The parties stipulated that the collective bargaining agreement attached to the email did not contain the amount of dues.[5]

The collective bargaining agreement was signed by the Union, dated July 17, 2017 and returned to the Employer for signature. According to the testimony of Union President Clemenza, the Union intended for the Employer to sign the collective bargaining agreement and return the signed agreement to the Union; there never came a time that the Union did not want the Employer to sign the agreement. In this regard, Article 12 of the Agreement acknowledges the signature requirement, specifically stating that, "The agreement shall be executed by both parties hereto."

After various email communications between the attorneys for the Union and the Employer, wherein the Union asked for the signed agreement and the Employer essentially indicated that it would sign the agreement, on September 18, 2017, the Employer's attorney

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[4] Union President Clemenza, Union attorney Chaikin, Employer attorneys McGuire and Clark and Employer Owner William Haugland, Jr. participated at bargaining sessions.

[5] The Union's attorney stated in its closing argument that "for some reason the dues amount had been deleted from prior drafts." In this regard, it is noted that the March 7 draft, Article 6 -Dues Check-Off, indicated that, "the Employer shall deduct from the hourly wage rate of employees covered by this agreement starting January 1, 2017 up to and including June 30, 2020 the sum designated below ." The draft Dues Check-Off provision went on to set forth the dues amounts referenced as follows, "Effective January 1, 2017 .the Employer shall also deduct from the wages of the employee the sum of $1.50 per hour for all hours worked including overtime." Thereafter the draft stated that for each of three further effective dates, i.e., July 1, 2017, July 1, 2018, and July 1, 2019, the Employer would deduct "the sum $ TBD per hour for all hours worked including overtime."

indicated that the Employer had concerns about the dues; [6] the Union's attorney responded that this issue was never raised previously.

Unfair Labor Practice Charge, the Instant Petition and Contract Execution by Employer

On September 21, 2017, the Union filed an unfair labor practice charge in Case No 29-CA-206592, alleging that the Employer failed to bargain in good faith by failing and refusing to sign the agreed upon collective bargaining agreement, in violation of Sections 8(a)(1) and (5) of the Act.[7] The same day, September 21, 2017, the instant decertification petition was filed. Pursuant to an Order issued on September 23, 2017, the processing of the petition was held in abeyance pending resolution of the matter in Case No. 29-CA-206592.

On December 15, 2017, the Employer signed the initial collective bargaining agreement. The agreement states that it is effective as of July 17, 2017. The signature page indicates, "In Witness whereof the parties have executed this Agreement effective as of the date first above written July, 17, 2017."

Thereafter, the Union requested permission to withdraw the unfair labor practice charge. On December 28, 2017, the undersigned issued a letter approving the Union's withdrawal of the charge in Case No. 29-CA-206592.

The Petitioner did not agree to withdraw the instant petition. Further, the Employer did not admit to engaging in conduct in violation of Sections 8(a) (1) and (5) of the Act as alleged in Case No. 29-CA-206592.

Implementation of the Collective Bargaining Agreement Prior to the Filing of the Instant Petition on September 21, 2017

As noted above, the Union executed the collective bargaining agreement on July 17, 2017 and the Employer executed the collective bargaining agreement on December 15, 2017. During the period between the Union and the Employer signing the agreement, the instant petition was filed.

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[6] Record evidence shows that after July 17, 2017, the Union sent four such emails to the Employer before any issue was raised. In this regard, on July 19, the Union's attorney asked when it could expect to receive the signed agreement and indicated that the Union dated the agreement effective July 17; the Employer's attorney responded that it was effective July 17 and that she would send it as soon as she received it. On July 26, the Union's email reiterated that the Union signed the contract and dated it July 17 and asked if the Employer was reneging or was it on the way; the Employer's attorney forwarded an email from the Employer stating that he had been away, he would complete the "last technicality" as soon as possible and that no reneging was taking place. On August 11, the Union's email asked if it would be receiving the fully executed contract by Monday; on August 15, the Employer's attorney responded that wage increases retroactive to July 17 would be paid promptly and that she expected to receive a signed copy that day or the next day. On September 11, the Union attorney's email to the Employer's attorney stated that it was almost two months and asked why the Union did not have a signed collective bargaining agreement from the Employer. The next emails exchanged, were dated September 13 and 18, 2017, wherein the Union's attorney essentially indicated that the Union had been advised that the Employer was not signing the agreement and the Employer's attorney responded that the Employer had concerns about the dues.

[7] I take administrative notice of the charge referenced in the Orders received in evidence as Board Exhibit No. 1.

The Union asserts that certain provisions of the collective bargaining agreement were implemented after July 17, 2017 and prior to September 21, 2017, which would indicate that there was a mutual agreement prior to the filing of the instant petition. Specifically, with regard to a provision in the collective bargaining agreement setting forth a 3% annual wage increase, the Petitioner's testimony indicates that he received a thirty cent per hour wage increase before the petition was filed. Further, the Employer's attorney, in an August 15, 2017 email to the Union's attorney, indicated that wage increases retroactive to July 17 would be paid "promptly." [8]

With regard to the provision in the collective bargaining agreement setting forth Labor Day as a paid holiday, the record shows that Labor Day was a paid holiday prior to the Employer and the Union entering into the collective bargaining agreement; thus, the fact that employees were paid for Labor Day when the company was closed is not probative of the implementation of the collective bargaining agreement.

With regard to the provision in the collective bargaining agreement for overtime pay after working in excess of 8 hours in one day (set forth in Article 5, entitled, "Wages and Hours"), the Petitioner's testimony indicated that there was no change in the way overtime was calculated after July 17, and that it was calculated on a daily basis. The Employer's attorney represented that overtime was calculated on a daily basis prior to the date that the Union signed the collective bargaining agreement, i.e., July 17, 2017, and thus that there was no change in the practice due to the implementation of the collective bargaining agreement. In this regard, it is noted that the Employer admits that there was an email from the Employer's attorney to the Union's attorney, dated October 21, 2016 (during the certification year) indicating that over-time was paid at one and one half times the regular rate after 40 hours. Thus, the record indicates that there was a change in the Employer's method of calculating overtime at some point between October 21, 2016 and the date of the hearing; however, record evidence does not establish whether the change took place before or after July 17, 2017. Thus, record evidence is insufficient to establish that the change to the Employer's method of calculating overtime on a weekly basis to a daily basis was an implementation of the collective bargaining agreement.

The Employer and the Union stipulated that prior to September 21, 2017 (the date the petition was filed) the Union did not receive dues payments. Thus, the record does not indicate that the dues provision of the collective bargaining agreement was implemented prior to the filing of the instant petition.

Further, no grievances were filed between July and the date that the petition was filed, September 21, 2017. (Tr. 111)

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[8] The Employer refused to stipulate that the wage increase was implemented pursuant to the agreement with the Union. The collective bargaining agreement refers to a 3% annual wage increase effective on the date of execution of the Agreement; the record is insufficient to determine whether the $.30 per hour increase was a 3% annual increase.

DISCUSSION

The Board has established the general rule that where a contract of definite duration is reduced to writing and signed by both parties, it will act as a bar for up to 3 years of its term to an election petition filed by an employee or rival union after the contract is signed.[9] *General Cable Corp.*, 139 NLRB 1123 (1962); *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958). However, if a petition is filed before the execution date of a contract effective either immediately or retroactively and is otherwise timely, the contract subsequently entered into will not bar the processing of the petition and the holding of an election. *Deluxe Metal Furniture*, 121 NLRB 995, fn. 6 (1958). See also, *City Markets,* 273 NLRB 469 (1984).

With regard to the signature requirement, in *Appalachian Shale*, the Board adopted the rule that "a contract to constitute a bar must be signed by all the parties before a petition is filed and that unless a contract signed by all the parties precedes a petition, it will not bar a petition even though the parties consider it properly concluded and put into effect some or all of its provisions." *Appalachian Shale*, *supra* at 1162. The Board recognized that on occasion parties sign an informal document which contains substantial terms and conditions of employment; sometimes an agreement is arrived at by an exchange of a written proposal and a written acceptance, both signed. However, the Board made clear the necessity for signing the contracts or documents constituting the agreement of the parties. *Appalachian Shale*, supra at 1162.

Accordingly, where the question raised is whether an unsigned document could constitute a bar to an election, the Board has held that without the signature of both parties on the collective bargaining agreement, or some document referring thereto, the agreement is insufficient to act as a bar. See e.g. *De Paul Adult Care Communities, Inc.*, 325 NLRB 681 (1998) (where the parties reached agreement but there was no document signed by both parties memorializing the parties' agreement, such unsigned agreement was insufficient to act as a bar to a decertification petition); *Crothall Hospital Services*, 270 NLRB 1420 (1984) (where contract was not signed by all named contracting parties, it did not constitute a bar).). See also, *Diversified Services, Inc. d/b/a Holiday Inn of Ft. Pierce*, 225 NLRB 1092 (1976) (where the Employer's signed cover letter requesting that the union sign and return the accompanying contract, coupled with the union's execution of the contract prior to the filing of the petition satisfied the signing requirement of the Board's contract-bar rules).

Further, the Board has found that a decertification petition filed after the occurrence of alleged unfair labor practices by the employer, and prior to settlement of those charges, should not be dismissed where there has been no finding or admission that the employer actually engaged in the allegedly wrongful conduct. *TruServ Corporation*, 349 NLRB 227 (2007). Similarly, in *City Markets*, the Board held that a contract entered into during a period when a decertification petition is blocked by unfair labor practice charges will not bar the processing of an otherwise timely filed petition when the charges are withdrawn.

[9] Other requirements for a contract to constitute a bar include that it contain terms sufficient to stabilize the collective-bargaining relationship, and cover an appropriate unit that is the same unit sought in the representation petition. *Appalachian Shale Products Co.*, 121 NLRB 1160 (1958).

Here, record evidence shows that the Union and the Employer engaged in negotiations; the Employer emailed to the Union a final agreement that required the amount of working dues to be added to a dues check off provision; the Union signed the agreement, apparently filled in the dues amount, and returned it to the Employer for signature on or about July 17, 2017. While the evidence shows it was the intent of the Union and the Employer to enter into a formal signed agreement and the agreement itself required execution by both parties, the Employer's signature was delayed for some time. Then, in mid-September 2017, the Employer indicated that it had concerns about the dues provision. On September 21, 2017, an unfair labor practice charge was filed by the Union alleging that the Employer failed and refused to sign the agreed upon collective bargaining agreement, in violation of Sections 8(a) (1) and (5) of the Act. The same day, the instant petition was field. Thereafter, on December 15, 2017, the collective bargaining agreement was signed by the Employer and the unfair labor practice charge was withdrawn. The undersigned approved the Union's request to withdraw its charge.

The Union contends that the agreement between it and the Employer should act as a bar to the processing of the petition because the agreement existed prior to the filing of the petition and certain provisions, such as the wage increase and overtime provisions, were implemented prior to the filing of the petition. However, as specifically held in *Appalachian Shale*, contracts not signed before a petition will not bar the processing of the petition even though the parties consider it properly concluded and put into effect some or all of its provisions. Thus, even assuming certain provisions of the contract were implemented, inasmuch as the collective bargaining agreement was not signed prior to the filing of the petition, it cannot serve as a bar. *Appalachian Shale*, *supra* at 1162. Moreover, the evidence that the Employer and the Union intended to sign a formal agreement, memorialized in the signature requirement of the contract, indicates that the parties conditioned finality on signing of the formal agreement, which was not accomplished before the filing of the petition.[10]

Furthermore, the Union suggests that the Employer's delay in signing the agreement was to permit the decertification petition to be timely filed after the expiration of the certification year. However, the Union withdrew its unfair labor practice charge in Case No. 29-CA-206592, alleging that the Employer refused to sign the collective bargaining agreement in violation of Sections 8(a)(1) and (5) of the Act and there is no admission by the Employer that it engaged in such unlawful conduct. As noted above, the Board recognizes that a settlement or withdrawal of an outstanding unfair labor practice allegation does not constitute an admission by a charged party, or an adjudication by the Board, that an unfair labor practice has been committed. *TruServ Corporation*, 349 NLRB 227 (2007). Accordingly, since the petition was timely filed on September 21, 2017, i.e., before the collective bargaining agreement was signed, and there is no finding of a violation of the Act or an admission by the Employer of such a violation, there is no basis for dismissing the petition. To do so would unfairly give determinative weight to allegations of unlawful conduct and would be in derogation of employee rights under Section 7

[10] Further, it is noted that the collective bargaining agreement, while finalized with the Employer's signature on December 15, 2017, states on its face that it is effective as of July 17, 2017. Such a retroactive effective date does not operate to bar an election where the petition was filed on September 21, 2017. *See Deluxe Metal, supra* at fn. 6. (an initial contract does not bar an election if a petition is filed with the Board before the execution date of the contract where the contract is effective immediately or retroactively).

of the Act.[11] See *TruServ Corporation*, 349 NLRB 227 (2007); *City Markets*, 273 NLRB 469 (1984).

In these circumstances and where the collective bargaining agreement was not signed by the Employer until December 15, 2017, such agreement is insufficient to act as a bar to the instant petition, filed on September 21, 2017. See e.g. *De Paul Adult Care Communities, Inc.*, 325 NLRB 681 (1998) (where the parties reached agreement but there was no document signed by both parties memorializing the parties' agreement, such unsigned agreement was insufficient to act as a bar to a decertification petition).

CONCLUSIONS AND FINDINGS

Based upon the entire record in this proceeding, the undersigned finds and concludes as follows:

1. The Hearing Officer's rulings are free from prejudicial error and hereby are affirmed.

2. The parties stipulated and I hereby find, that the Employer is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and is subject to the jurisdiction of the Board.

The parties further stipulated that Inwood Material Terminal, LLC, a limited liability company, with offices and places of business located at 1 Sheridan Boulevard, Inwood, New York and Herb Hill Road, Glen Cove, New York, is engaged in providing recycling services to other businesses. During the past year, which period is representative of its annual operations generally, the Employer, in the course and conduct of its business operations, purchased and received at it each of its facilities, goods and supplies valued in excess of $50,000 directly from suppliers located outside the State of New York. The Employer is engaged in commerce within the meaning of the Act.

It will therefore effectuate purposes of the Act to assert jurisdiction in this case.

3. The parties stipulated, and I hereby find, that United Plant & Production Workers, Local 175 P is an organization in which employees participate, and which exists, in whole or in part, for the purpose of dealing with employers concerning wages, hours and other working conditions of employment. The Union is a labor organization within the meaning of Section 2(5) of the Act.

4. A question concerning commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

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[11] It is noted that the petition was filed before the settlement/withdrawal of the unfair labor practice charge in Case No. 29-CA- 206592; the undersigned has not found that the petition was instigated by the employer or that the employees' showing of interest in support of the petition was solicited by the employer; and the settlement of the unfair labor practice charge did not include an agreement by the decertification petitioner to withdraw the petition.

5. The parties stipulated and I find that the following employees constitute a unit appropriate for the purposes of collective bargaining:

All full-time and regular part-time drivers, machine operators, mechanics and laborers employed by the Employer and working at or out of its facility located at 1 Sheridan Boulevard, Inwood, New York, and 47 Herb Hill Road, Glen Cove, New York, but excluding clerical employees, confidential employees, managers, guards and supervisors as defined by the National Labor Relations Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. Employees will vote whether or not they wish to be represented for purposes of collective bargaining by United Plant & Production Workers, Local 175 P.

A. Election Details

The election will be held on Thursday, March 8, 2018 from 3:00 p.m. to 4:00 p.m. in the upstairs conference room at the Employer's facility located at 1 Sheridan Boulevard, Inwood, New York.

B. Voting Eligibility

Eligible to vote are those in the unit who were employed during the payroll period ending **February 18, 2018**, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced, are also eligible to vote. In addition, in an economic strike that commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

C. Voter List

As required by Section 102.67(l) of the Board's Rules and Regulations, the Employer must provide the Regional Director and parties named in this decision a list of the full names,

work locations, shifts, job classifications, and contact information (including home addresses, available personal email addresses, and available home and personal cell telephone numbers) of all eligible voters.

To be timely filed and served, the list must be *received* by the regional director and the parties by February 22, 2018. The list must be accompanied by a certificate of service showing service on all parties. **The region will no longer serve the voter list.**

Unless the Employer certifies that it does not possess the capacity to produce the list in the required form, the list must be provided in a table in a Microsoft Word file (.doc or docx) or a file that is compatible with Microsoft Word (.doc or docx). The first column of the list must begin with each employee's last name and the list must be alphabetized (overall or by department) by last name. Because the list will be used during the election, the font size of the list must be the equivalent of Times New Roman 10 or larger. That font does not need to be used but the font must be that size or larger. A sample, optional form for the list is provided on the NLRB website at www.nlrb.gov/what-we-do/conduct-elections/representation-case-rules-effective-april-14-2015.

When feasible, the list shall be filed electronically with the Region and served electronically on the other parties named in this decision. The list may be electronically filed with the Region by using the E-filing system on the Agency's website at www.nlrb.gov. Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions.

Failure to comply with the above requirements will be grounds for setting aside the election whenever proper and timely objections are filed. However, the Employer may not object to the failure to file or serve the list within the specified time or in the proper format if it is responsible for the failure.

No party shall use the voter list for purposes other than the representation proceeding, Board proceedings arising from it, and related matters.

D. Posting of Notices of Election

Pursuant to Section 102.67(k) of the Board's Rules, the Employer must post copies of the Notice of Election accompanying this Decision in conspicuous places, including all places where notices to employees in the unit found appropriate are customarily posted. The Notice must be posted so all pages of the Notice are simultaneously visible. In addition, if the Employer customarily communicates electronically with some or all of the employees in the unit found appropriate, the Employer must also distribute the Notice of Election electronically to those employees. The Employer must post copies of the Notice at least 3 full working days prior to 12:01 a.m. of the day of the election and copies must remain posted until the end of the election. For purposes of posting, working day means an entire 24-hour period excluding Saturdays, Sundays, and holidays. However, a party shall be estopped from objecting to the nonposting of notices if it is responsible for the nonposting, and likewise shall be estopped from objecting to the nondistribution of notices if it is responsible for the nondistribution.

Failure to follow the posting requirements set forth above will be grounds for setting aside the election if proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Pursuant to Section 102.67 of the Board's Rules and Regulations, a request for review may be filed with the Board at any time following the issuance of this Decision until 14 days after a final disposition of the proceeding by the Regional Director. Accordingly, a party is not precluded from filing a request for review of this decision after the election on the grounds that it did not file a request for review of this Decision prior to the election. The request for review must conform to the requirements of Section 102.67 of the Board's Rules and Regulations.

A request for review may be E-Filed through the Agency's website but may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the request for review should be addressed to the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. A party filing a request for review must serve a copy of the request on the other parties and file a copy with the Regional Director. A certificate of service must be filed with the Board together with the request for review.

Neither the filing of a request for review nor the Board's granting a request for review will stay the election in this matter unless specifically ordered by the Board.

Dated: the 20th day of February, 2018

Kathy Drew King
Regional Director, Region 29
National Labor Relations Board
Two MetroTech Center, 5th Floor
Brooklyn, New York 11201